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November 14, 2001

VIA ELECTRONIC FILING AND HAND DELIVERY **EX PARTE**

Ms. Magalie Roman Salas
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Re: Ex Parte Communication in ET Docket No. 98-206; RM-9147; RM-9245; Applications of Broadwave USA et al., PDC Broadband Corporation, and Satellite Receivers, Ltd., to provide a fixed service in the 12.2-12.7 GHz Band; Requests of Broadwave USA et al. (DA 99-494), PDC Broadband Corporation (DA 00-1841), and Satellite Receivers, Ltd. (DA 00-2134) for Waiver of Part 101 Rules.

Dear Ms. Salas:

On November 13, 2001, Antoinette Cook Bush and Katherine Reynolds of Northpoint Technology, Ltd. ("Northpoint") met with the following officials on Commissioner Abernathy's staff: Bryan Tramont, Senior Legal Advisor; and Jason Scism, Special Assistant for Congressional, Intergovernmental, and Industry Relations.

Later that day, Sophia Collier, Antoinette Cook Bush, and Linda Rickman of Northpoint, and J.C. Rozendaal of this firm met with the following officials in the Wireless Telecommunications Bureau ("WTB"): Thomas Sugrue, Bureau Chief; Kathleen Ham, Deputy Chief; Thomas Stanley, Chief Engineer; and Barry Ohlson, Legal Advisor.

The attached presentation was distributed at both meetings and summarizes the points Northpoint made. In addition, at the meeting with Commissioner Abernathy's staff, Northpoint distributed copies of ex parte filings it made in ET Docket 98-206 on September 19 (summarizing legal arguments made to the General Counsel's office); October 23 (responding to recent filings by Pegasus Broadband Corp.); and November 2 (responding to recent filings by MDS America, Inc.).

At the meeting with WTB officials, Northpoint addressed the issue of on-site mitigation, which has been overblown by the DBS industry. Northpoint noted at the outset that it does not seek targeted or preferential access to DBS customers as part of the mitigation process and has never sought access to the DBS industry's subscriber lists. Northpoint also emphasized that careful site selection and system design in the deployment of its transmitters would minimize the number of homes in a mitigation zone. Northpoint pointed out that the term "mitigation zone" might have caused some confusion insofar as it might be thought to suggest that every home in such a zone would need on-site mitigation. On the contrary, Northpoint expects that very few, if any, DBS subscribers in a given mitigation zone would require on-site mitigation. Northpoint noted that in experimental tests, factors such as natural shielding, careful transmitter placement, power control, and other techniques that did not require visiting any DBS subscriber's home were used successfully to avoid harmful interference with DBS signals. Not even in the DBS industry's own tests of Northpoint's technology was there a even a single instance of harmful interference to any DBS subscriber. No on-site mitigation was ever needed

Northpoint also reiterated its concern that whatever rules the Commission might adopt regarding on-site mitigation should provide some incentive for the DBS industry to avoid imposing unnecessary costs on Northpoint. Northpoint fully expects *always* to bear the cost of any necessary mitigation. But where a DBS operator seeks to require mitigation in circumstances that turn out, upon appropriate investigation, to be unnecessary, the DBS operator should compensate Northpoint for expenses incurred in investigating and demonstrating that no such mitigation is needed. Such a regime would give the DBS industry the appropriate incentive to seek mitigation where truly needed, but not to abuse the mitigation process as a means of unfairly running up Northpoint's costs.

This letter will be filed electronically in ET Docket 98-206, RM-9147, and RM-9245. In addition, twelve copies of this letter will be filed in paper form – two for inclusion in each of the above-referenced application files. Please contact me if you have any questions.

Yours sincerely,

J. C. Rozendaal
Counsel for Northpoint Technology, Ltd.

attachment

cc: meeting participants

MDS Experimental Report Does Not Support MDS Claims

- Northpoint has sued MDS for patent infringement, yet it is essential for the Commission to realize that MDS' imitation is highly flawed – the MDS experimental report does not put any information in the record to support the MDS claim that it is capable of sharing with DBS.
- MDS did not document transmission or reception of video, data or any coherent signal.
- MDS did not provide any quantitative assessment of its impact on DBS
  - The critical factors MDS omitted:
    - Equivalent power flux density ("e.p.f.d.") of its signal
    - Actual carrier-to-interference ratio ("C/I")
    - Estimate of the increase in unavailability of DBS reception
  - Without these measurements MDS claims of compatibility with DBS are unsupported.

Flawed MDS Test Methodology
Invalidated Data Submitted in MDS Report

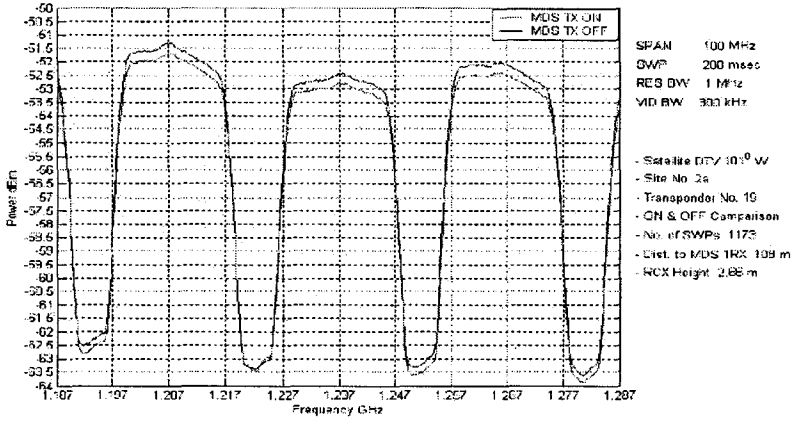


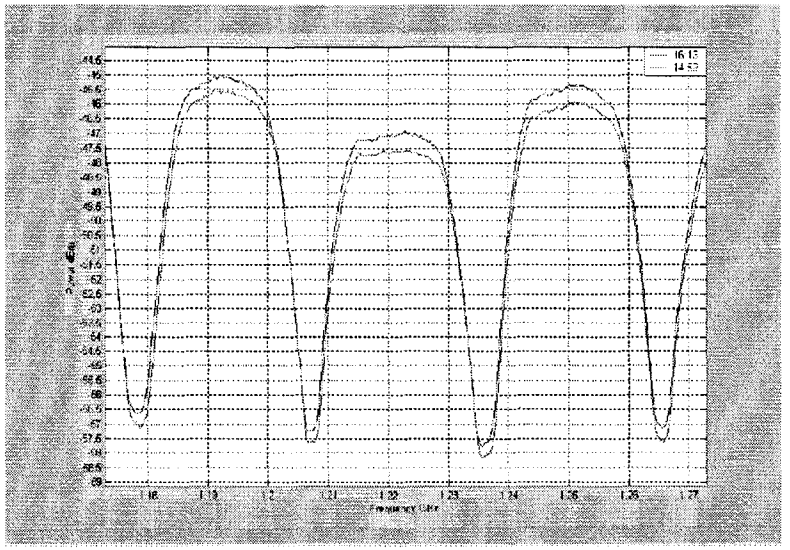
Figure 35 Site 2a DTV101 RC ON & OFF Comparison plot

Figure 35 from MDS report depicts bias – Indicative of measurement error.

- MDS documented an "almost constant bias" in its data.
- MDS attempted to attribute this bias to "changes in weather" that it claimed were correlated with the times it turned its transmitter on and off.
- The bias is larger than any interference criteria considered by Commission.
- Presence of this bias invalidates report as it is impossible to identify if the measurements show interference or measurement bias.

New MDS Submissions
Further Document Un-quantified Bias

- Recent filings from MDS confirm that MDS allowed atmospheric affects to pollute its test data.
- MDS report must be disregarded.



November 7 ex-parte slide shows Washington area readings depicting similar variances as MDS recorded in Florida.

Demonstrates that MDS report data is invalid.

MDS Contradictory Statements Regarding Mitigation

- In recent Ex Parte, MDS claims that its technology needs no on-site mitigation. Through the MDS technology:

  "DBS customers [equipment] need not be altered in any way to accommodate MVDDS." (MDS, Nov 8, 2001 Ex Parte)

- MDS Oct 17 Report:

  "Based on the analysis of the collected data, the MDS transmitter can very well co-exist with the DBS signal in this type of environment with a limited mitigation zone. The mitigation zone can be as small as 100 m around the transmitter."

- MDS never defined what it meant by a "mitigation zone" but presumably it is an area which requires additional mitigation beyond that which is supplied by the MDS equipment.

Pegasus's Proposals Would Hinder, Rather Than Promote, Terrestrial Deployment

- Pegasus multi-tiered proposals:
  - A limit on the carrier to interference ratio (C/I ratio), and:
  - A limit on the terrestrial transmitter EIRP, plus:
  - A limit on the PFD value at any DBS receiver to -181.5 dBw/M2/MHz, in combination with:
  - A limit on the transmitting antenna azimuth.
- Northpoint: C/I (or EPFD) limit defines acceptable level of interference.
- It cannot possibly matter what the transmitting antenna azimuth or EIRP might be, if the EPFD limit is met.

Pegasus Proposals Would Prevent Deployment of MVDDS

- Pegasus proposes to limit the transmitting e.i.r.p to -17.5 dBW per 500 MHz:
  - Reduction by 13 dB of typical transmitter
  - Reduces transmit radius by factor of 10,
  - Reduces area served by factor of 100
- Pegasus proposes additional limit on PFD of –181.5 dBW per 1 MHz
  - Result is C/I protection ratio of 90 dB
- Pegasus proposes additional limit on "transmit azimuth" of terrestrial system
  - Would limit transmit azimuth to less than $1/6^{th}$ of compass
- Proposals must be considered anti-competitive.

Math: Pegasus PFD Proposal Equates to C/I of 90 dB

PFD = -181.5 dBW/m^2 in a 1 MHz bandwidth

Conversion to 24 MHz bandwidth: 10*Log(24)	= 13 dB
Allowance for 1 m^2 antenna	= -43.3 dB
Antenna gain towards interferer (worst case)	= 0 dB
Resulting interference power	= -211 dB
Carrier power	= -120 dBW
C/I	= 90 dB

CERTIFICATE OF SERVICE

I, Shonn Dyer, hereby certify that on this 14th day of November, 2001, copies of the foregoing, were served by hand delivery* and/or first class United States mail, postage prepaid, on the following:

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